

Decision 04-03-030 March 16, 2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking into Distributed
Generation.

Rulemaking 99-10-025
(Filed October 21, 1999)

**OPINION ON REQUEST FOR COMPENSATION
BY LATINO ISSUES FORUM AND GREENLINING INSTITUTE
FOR CONTRIBUTIONS TO DECISION 03-02-068**

1. Summary

This decision grants \$67,338.14 jointly to Latino Issues Forum (LIF) and Greenlining Institute (Greenlining) (collectively, LIF/Greenlining), for substantial contributions to Decision (D.) 03-02-068.

2. Background

In D.00-12-037, we adopted improved interconnection tariff rules for Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E) and Southern California Edison Company (SCE). In D.01-07-027, we addressed rules and policies for standby rates for onsite generation facilities, i.e., facilities located on, or in close proximity to, the property of the customer(s) whose load the facilities are designed to serve. In D.03-02-068, we completed our rulemaking and established policies for ownership and operation of distributed generation and their integration into utility planning and operation of the distribution grid. We found that there was no need for restrictions on distributed generation ownership. Distributed generation owners will only be eligible for compensation for deferring distribution system upgrades in limited circumstances, and only if the distributed generator offers physical assurance.

Also, because almost every retail sale utilizes both the distribution and transmission networks (even those that appear to stay within a single circuit), we did not adopt a distribution-only tariff. Finally, we stated our intention to open a new rulemaking related to distributed generation.

LIF/Greenlining seeks compensation for contributions to D.03-02-068. LIF and Greenlining were found to be customers eligible to file a request for compensation in a ruling by the assigned Administrative Law Judge (ALJ) on January 20, 2000.

3. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812.¹ Section 1804(a) requires an intervenor to file a Notice to claim compensation within prescribed time periods. The Notice must present information regarding the nature and extent of the customer's planned participation and an itemized estimate of the compensation the customer expects to request.² Also, to be eligible for compensation, the customer must show that it would suffer "significant financial hardship" (as defined in § 1802(f)) if it were to participate in our proceeding without an award compensating it for its reasonable costs of participation. The customer's Notice may contain that showing, in which case the Notice may also request a finding of eligibility.

Related code sections address requests for compensation filed after a Commission decision is issued. Under § 1804(c), an intervenor requesting

¹ All statutory citations are to the Public Utilities Code.

² To be eligible for compensation, an intervenor must be a "customer," as defined by § 1802(b). In today's decision, "customer" and "intervenor" are used interchangeably.

compensation must provide “a detailed description of services and expenditures and a description of the customer’s substantial contribution to the hearing or proceeding.” Section 1802(h) states that “substantial contribution” means that,

... in the judgment of the commission, the customer’s presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer’s participation has resulted in a substantial contribution, even if the decision adopts that customer’s contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate’s fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.

Section 1804(e) requires the Commission to issue a decision that determines whether the customer has made a substantial contribution and what amount of compensation to award. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

3.1 Timeliness of Request

Section 1804(c) requires an eligible customer to file a request for an award within 60 days of issuance of a final order or decision by the Commission in the proceeding. D.03-02-068 was issued on March 5, 2003. The sixtieth day (May 4, 2003) was a Sunday, so Requests were due on May 5, 2003.

LIF/Greenlining's request for compensation (Request) was filed on April 28, 2003.³ The Request was timely.

3.2 Financial Hardship

In its Notice, LIF/Greenlining elected to defer its showing of financial hardship to its Request. In the Request, LIF/Greenlining cites D.02-07-030, in which it was awarded compensation, as demonstrating that it meets the financial hardship criterion. LIF/Greenlining's assertion that its financial position is unchanged since D.02-07-030 has not been opposed. Furthermore, the claim of financial hardship comes less than a year after D.02-07-030, when we found such hardship to exist. Consequently, a rebuttable presumption of eligibility exists for LIF/Greenlining in this proceeding. (See § 1804(b)(1).) We again find LIF/Greenlining eligible under § 1802(g) for compensation.

4. Substantial Contribution to Resolution of Issues

Pursuant to § 1802(h), a party may make a substantial contribution to a decision in several ways. It may offer a factual or legal contention upon which the Commission relied in making a decision or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.

In D.98-04-059, the Commission noted that an element of a customer's demonstration of "substantial contribution" is a showing that the customer's

³ LIF/Greenlining filed an Amendment and Errata to the Request for Intervenor Compensation for Substantial Contribution to D.03-02-068 by Latino Issues Forum and the Greenlining Institute (Amendment) on June 19, 2003. The Amendment corrected an error in the caption of the Request and revised one section of the text. No objection to the Amendment was filed.

participation was “productive,” as that term is used in § 1801.3, where the Legislature provided guidance on program administration.⁴ D.98-04-059 explained that participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation. D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the ratepayer benefits of their participation. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation.

4.1 Contribution to Resolution of Issues

LIF/Greenlining classified its hours by issue area: public purpose programs (PPP) non-bypassable funding; preserving existing PPP funding tariffs; expansion of net metering; consumer education about distributed generation; consumer protection; general (including travel); and preparation of the request for compensation.⁵

LIF/Greenlining made a substantial contribution to the PPP issues we decided. Since the non-bypassable nature of the PPP charge is fixed by statute, in our decision we followed this statutory policy. We went on, as LIF/Greenlining urged, to reject the suggestion of Aglet Consumer Alliance that we approach the Legislature to change this aspect of PPP funding.⁶ LIF/Greenlining also

⁴ See D.98-04-059, *mimeo.* at 31-33, and Finding of Fact 42.

⁵ In accordance with our usual practice, LIF/Greenlining reduced the hours claimed for travel and preparation of the Request by 50%.

⁶ D.03-02-068, *mimeo.*, p. 46.

advanced the position that PPP funding should not use either a one-time “exit fee” or new tax. We adopted this position.⁷

LIF/Greenlining’s work on the possible expansion of net metering focused on the potential for increases in net metering to impact PPP funding. Although our decision on net metering was based on the then-recent enactment of Assembly Bill (AB) X1 29 and AB 58, rather than the recommendations of the parties, LIF/Greenlining contributed to the development of the record on net metering and those hours are eligible for compensation.

In D.03-02-068, we also considered consumer education and consumer protection issues. Although we did not adopt the broad-based consumer education program advocated by LIF/Greenlining, we did adopt alternative education efforts that were better informed as a result of LIF/Greenlining’s efforts, and thus LIF/Greenlining made a substantial contribution. We declined to adopt LIF/Greenlining’s suggestions about instituting comprehensive consumer protection measures at this time, but committed to revisit the issue when necessary. LIF/Greenlining’s proposals made a substantial contribution to our commitment to reviewing the consumer protection issue.

5. Reasonableness of Requested Compensation

5.1 LIF/Greenlining’s Request

LIF/Greenlining requests \$56,412.89.⁸ Table 1 shows the total requested hours as set forth in LIF/Greenlining’s Request, with the calculation error corrected.

⁷ *Id.*

⁸ This request has a calculation error. The correct amount requested should be \$56,562.89.

Table 1

Advocate	Year	Hours	Rate	Total
Brown	1999	10.5	\$ 275	\$ 2,887.50
Brown	2000	132.0	\$ 275	36,300.00
Brown	2001	17.0	\$ 300	5,100.00
Brown	2002	5.0	\$ 325	1,625.00
Brown	2003	8.5	\$ 340	2,890.00
Gonzales	2000	7.75	\$ 250	1,937.50
Gamboa ⁹	2000	2.50	\$ 300	750.00
Gallardo ¹⁰	2003	9.75	\$ 255	2,486.25
Personnel subtotal				\$53,976.25
Expenses				\$ 2,586.64
Total Compensation Request (corrected)				\$56,562.89

5.2 Hours Claimed

The 17 hours claimed for Brown in 2001 are related to commenting on the draft decision and alternate for what become D.01-07-027, not D.03-02-068. Since LIF/Greenlining has neither requested compensation for its contribution to D.01-07-027 nor explained how its work on D.01-07-027 contributed to our decision in D.03-02-068, those hours should not be compensated. The five hours requested for Brown on PPP issues in February 2002 are misclassified. They should have been attributed to February 2003. We will treat them as 2003 hours and find them compensable.

Table 2 shows the changes made to hours both for failure to make a substantial contribution and for misallocation of hours to the wrong year.

⁹ The summary table included in the LIF/Greenlining request contains a calculation error. Table 1 here corrects that error.

¹⁰ Hours claimed for Gallardo are solely for preparation of the compensation request.

Table 2

Advocate	Year	Hours claimed	Change	Hours allowed	Reason
Brown	1999	10.5	--	10.5	
Brown	2000	132.0	--	132.0	
Brown	2001	17.0	-17.0	0	for D.01-07-027
Brown	2002	5.0	-5.0	0	allocated to wrong year
Brown	2003	8.5	+5.0	13.5	correcting allocation
Gonzales	2000	7.75	--	7.75	
Gamboa	2000	2.50	--	2.50	
Gallardo	2003	9.75	--	9.75	

5.3 Hourly Rates

Section 1806 requires the Commission to compensate eligible parties at a rate that reflects the “market rate paid to persons of comparable training and experience who offer similar services.”

Since the Request was filed, we have adopted hourly rates for Susan Brown, Enrique Gallardo, and John Gamboa in other decisions. Although LIF/Greenlining has not requested that we do so, we apply the more recently approved rates here. In D.03-10-061, we adopted a 1999 hourly rate of \$361 for Brown and of \$290 for Gamboa. In D.03-10-062, we adopted a 2001 hourly rate of \$380 for Brown and of \$310 for Gamboa. We also adopted a 2002 hourly rate of \$380 for Brown and \$265 for Gallardo. For compensable hours in 2000, we will use the 2001 rates. For compensable hours in 2003, we will use the 2002 rates, without prejudice to LIF/Greenlining’s ability to seek other rates for 2003 hours in other proceedings. For Gonzales, whose qualifications and experience are comparable to Gamboa, we adopt the rate for Gamboa.

Consistent with our usual practice, LIF/Greenlining correctly separated out hours spent traveling and preparing its intervenor compensation

award claim, and charged for them at one-half of its requested hourly rates (by claiming only one-half of the hours spent on compensation matters and travel).

5.4 Other Costs

LIF/Greenlining has listed \$2,586.64 in expenses associated with this case for its photocopying and postage. The cost breakdown included with the claim shows its miscellaneous expenses to be commensurate with the work performed. We find all of LIF/Greenlining's other costs reasonable.

5.5 Total Award

Table 3 shows our total adjustment of both hours and rates, as discussed above. We award LIF/Greenlining \$67,338.14 jointly for contributions to D.03-02-068.

Table 3

Advocate	Year	Hours	Rate	Total
Brown	1999	10.25	\$ 361	\$3,700.25
Brown	2000	132.0	\$ 380	\$50,160.00
Brown	2001	0	\$ 380	\$0.00
Brown	2002	0	\$ 380	\$0.00
Brown	2003	13.5	\$ 380	\$5,130.00
Gonzales	2000	7.75	\$ 310	\$2,402.50
Gamboa	2000	2.50	\$ 310	\$775.00
Gallardo	2003	9.75	\$ 265	\$2,583.75
Personnel subtotal				\$64,751.50
Expenses				\$ 2,586.64
Total Compensation Award				\$67,338.14

6. Interest on Awards

Consistent with previous Commission decisions, we will order that LIF/Greenlining receive the award amount plus interest (calculated at the three-month commercial paper rate as reported in Federal Reserve Statistical Release H.15) commencing on the 75th day after it filed its compensation requests, continuing until full payment has been made.

7. Allocation of Compensation Between the Utilities

We direct PG&E, SDG&E, and SCE to allocate the awards based upon their California-jurisdictional electric revenues for the 2000 calendar year, to reflect the year in which the proceeding was primarily litigated.

8. Preservation of Documentation

As in all intervenor compensation decisions, we put LIF and Greenlining on notice that they must make and retain adequate accounting and other documentation to support the intervenor compensation claims, and that the Commission staff may audit their records related to this award. Those records should identify specific issues for which they have requested compensation, the actual time spent, the applicable hourly rate, and any other costs for which compensation is claimed.

9. Waiver of Comment Period

Pursuant to Rule 77.7(f)(6), the otherwise applicable 30-day period for public review and comment is being waived.

10. Assignment of Proceeding

Loretta M. Lynch is the Assigned Commissioner and Michelle Cooke is the assigned ALJ in this proceeding.

Findings of Fact

1. LIF and Greenlining were granted eligibility for compensation by a Ruling in response to a timely Notice.
2. LIF and Greenlining made timely requests for compensation for contributions to D.03-02-068.
3. LIF and Greenlining would suffer significant financial hardship if their participation in this proceeding were not compensated.
4. LIF and Greenlining contributed substantially to D.03-02-068.

5. The participation of LIF and Greenlining was productive in that the costs claimed for participation were less than the benefits realized.

6. The hours claimed for Brown's work in 2001 were not spent on work that contributed to D.03-02-068.

7. Since the request for compensation was filed, the Commission has approved new rates for Brown, Gallardo, and Gamboa.

8. It is reasonable to apply the hourly rates most recently approved by the Commission to this compensation request.

9. It is reasonable to adopt the same hourly rates for Gamboa and Gonzales.

10. The miscellaneous costs incurred by LIF and Greenlining are reasonable.

11. It is appropriate that the obligation for paying the awards be allocated on the basis of the utilities' California-jurisdictional electric revenues for the calendar year 2000.

12. The Appendix to this decision summarizes today's award.

Conclusions of Law

1. LIF and Greenlining have fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation.

2. LIF and Greenlining should be awarded \$67,338.14 jointly for contributions to D.03-02-068.

3. Per Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the comment period for this compensation decision may be waived.

4. This order should be effective today so that LIF and Greenlining may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE) shall pay the awards granted by Ordering Paragraph 2. The payment obligation shall be allocated among the utilities in proportion to their California-jurisdictional electric revenues for calendar year 2000.

2. Latino Issues Forum and Greenlining Institute are awarded \$67,338.14 jointly in compensation for their substantial contribution to Decision 03-02-068. PG&E, SDG&E, and SCE shall make payment within 30 days of the effective date of this order. PG&E, SDG&E, and SCE shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15, beginning the 75th day after April 28, 2003, the date the request was filed, and continuing until full payment has been made.

3. The comment period for this decision is waived.

4. This proceeding is closed.

This order is effective today.

Dated March 16, 2004, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

Compensation Decision Summary Information

Compensation Decision(s):	D0403030
Contribution Decision(s):	D0302068, D0107027
Proceeding(s):	R9910025
Author:	ALJ Cooke
Payer(s):	Pacific Gas and Electric Company; San Diego Gas & Electric Company; Southern California Edison Company

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Reason Change/ Disallowance
Latino Issues Forum and Greenlining Institute	4/28/03	\$56,412.89	\$67,338.14	Arithmetic errors; failure to make substantial contribution; increase in hourly rates.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Susan	Brown	Attorney	Latino Issues Forum	\$275	1999	\$361
Susan	Brown	Attorney	Latino Issues Forum	\$275	2000	\$380
Susan	Brown	Attorney	Latino Issues Forum	\$300	2001	\$380
Susan	Brown	Attorney	Latino Issues Forum	\$325	2002	\$380
Susan	Brown	Attorney	Latino Issues Forum	\$340	2003	\$380
Viola	Gonzales	Policy Expert	Latino Issues Forum	\$250	2000	\$310
John	Gamboa	Policy Expert	Greenlining Institute	\$300	2000	\$310
Enrique	Gallardo	Attorney	Latino Issues Forum	\$255	2003	\$265